Just as conservatives appeared to have lost any sense that democracy must be more than what the majority insists upon. I thought back to an afternoon several years earlier, when as a member of the Illinois legislature I had argued for an amendment to include a mother's health exception in a Republican bill to ban partial-birth abortion. The amendment failed on a party line vote, and afterward, I stepped out into the hallway with one of my Republican colleagues. Without the amendment, I said, the law would be struck down by the courts as unconstitutional. He turned to me and said it didn't matter what amendment was attached—judges would do whatever they wanted to do anyway.

"It's all politics," he had said, turning to leave. "And right now we've got the votes."

DO ANY OF these fights matter? For many of us, arguments over Senate procedure, separation of powers, judicial nominations, and rules of constitutional interpretation seem pretty esoteric, distant from our everyday concerns—just one more example of partisan jousting.

In fact, they do matter. Not only because the procedural rules of our government help define the results—on everything from whether the government can regulate polluters to whether government can tap your phone—but because they define our democracy just as much as elections do. Our system of self-governance is an intricate affair; it is through that system, and by respecting that system, that we give shape to our values and shared commitments.

Of course, I'm biased. For ten years before coming to Washington, I taught constitutional law at the University of Chicago. I loved the law school classroom: the stripped-down nature of it, the high-wire act of standing in front of a room at the beginning of each class with just blackboard and chalk, the students taking measure of me, some intent or apprehensive, others demonstrative in their boredom, the tension broken by my first question—

"What's this case about?"—and the hands tentatively rising, the initial responses and me pushing back against whatever arguments surfaced, until slowly the bare words were peeled back and what had appeared dry and lifeless just a few minutes before suddenly came alive, and my students' eyes stirred, the text becoming for them a part not just of the past but of their present and their future.

Sometimes I imagined my work to be not so different from the work of the theology professors who taught across campus—for, as I suspect was true for those teaching Scripture, I found that my students often felt they knew the Constitution without having really read it. They were accustomed to plucking out phrases that they'd heard and using them to bolster their immediate arguments, or ignoring passages that seemed to contradict their views.

But what I appreciated most about teaching constitutional law, what I wanted my students to appreciate, was just how accessible the relevant documents remain after two centuries. My students may have used me as a guide, but they needed no intermediary, for unlike the books of Timothy or Luke, the founding documents—the Declaration of Independence, the Federalist Papers, and the Constitution—present themselves as the product of men. We have a record of the Founders' intentions, I would tell my students, their arguments and their palace intrigues. If we can't always divine what was in their hearts, we can at least cut through the mist of time and have some sense of the core ideals that motivated their work.

So how should we understand our Constitution, and what does it say about the current controversies surrounding the courts? To begin with, a careful reading of our founding documents reminds us just how much all of our attitudes have been shaped by them. Take the idea of inalienable rights. More than two hundred years after the Declaration of Independence was written and the Bill of Rights was ratified, we continue to argue about the meaning of a

"reasonable" search, or whether the Second Amendment prohibits all gun regulation, or whether the desecration of the flag should be considered speech. We debate whether such basic common-law rights as the right to marry or the right to maintain our bodily integrity are implicitly, if not explicitly, recognized by the Constitution, and whether these rights encompass personal decisions involving abortion, or end-of-life care, or homosexual partnerships.

And yet for all our disagreements we would be hard pressed to find a conservative or liberal in America today, whether Republican or Democrat, academic or layman, who doesn't subscribe to the basic set of individual liberties identified by the Founders and enshrined in our Constitution and our common law: the right to speak our minds; the right to worship how and if we wish; the right to peaceably assemble to petition our government; the right to own, buy, and sell property and not have it taken without fair compensation; the right to be free from unreasonable searches and seizures; the right not to be detained by the state without due process; the right to a fair and speedy trial; and the right to make our own determinations, with minimal restriction, regarding family life and the way we raise our children.

We consider these rights to be universal, a codification of liberty's meaning, constraining all levels of government and applicable to all people within the boundaries of our political community. Moreover, we recognize that the very idea of these universal rights presupposes the equal worth of every individual. In that sense, wherever we lie on the political spectrum, we all subscribe to the Founders' teachings.

We also understand that a declaration is not a government; a creed is not enough. The Founders recognized that there were seeds of anarchy in the idea of individual freedom, an intoxicating danger in the idea of equality, for if everybody is truly free, without the constraints of birth or rank or an inherited social order—if my notion of faith is no better or worse than yours,

and my notions of truth and goodness and beauty are as true and good and beautiful as yours—then how can we ever hope to form a society that coheres? Enlightenment thinkers like Hobbes and Locke suggested that free men would form governments as a bargain to ensure that one man's freedom did not become another man's tyranny; that they would sacrifice individual license to better preserve their liberty. And building on this concept, political theorists writing before the American Revolution concluded that only a democracy could fulfill the need for both freedom and order—a form of government in which those who are governed grant their consent, and the laws constraining liberty are uniform, predictable, and transparent, applying equally to the rulers and the ruled.

The Founders were steeped in these theories, and yet they were faced with a discouraging fact: In the history of the world to that point, there were scant examples of functioning democracies, and none that were larger than the city-states of ancient Greece. With thirteen far-flung states and a diverse population of three or four million, an Athenian model of democracy was out of the question, the direct democracy of the New England town meeting unmanageable. A republican form of government, in which the people elected representatives, seemed more promising, but even the most optimistic republicans had assumed that such a system could work only for a geographically compact and homogeneous political community—a community in which a common culture, a common faith, and a well-developed set of civic virtues on the part of each and every citizen limited contention and strife.

The solution that the Founders arrived at, after contentious debate and multiple drafts, proved to be their novel contribution to the world. The outlines of Madison's constitutional architecture are so familiar that even schoolchildren can recite them: not only rule of law and representative government, not just a bill of rights, but also the separation of the national government into three coequal branches, a bicameral Congress, and a concept of

federalism that preserved authority in state governments, all of it designed to diffuse power, check factions, balance interests, and prevent tyranny by either the few or the many. Moreover, our history has vindicated one of the Founders' central insights: that republican self-government could actually work better in a large and diverse society, where, in Hamilton's words, the "jarring of parties" and differences of opinion could "promote deliberation and circumspection." As with our understanding of the Declaration, we debate the details of constitutional construction; we may object to Congress's abuse of expanded commerce clause powers to the detriment of the states, or to the erosion of Congress's power to declare war. But we are confident in the fundamental soundness of the Founders' blueprints and the democratic house that resulted. Conservative or liberal, we are all constitutionalists.

So if we all believe in individual liberty and we all believe in these rules of democracy, what is the modern argument between conservatives and liberals really about? If we're honest with ourselves, we'll admit that much of the time we are arguing about results—the actual decisions that the courts and the legislature make about the profound and difficult issues that help shape our lives. Should we let teachers lead our children in prayer and leave open the possibility that the minority faiths of some children are diminished? Or do we forbid such prayer and force parents of faith to hand over their children to a secular world eight hours a day? Is a university being fair by taking the history of racial discrimination and exclusion into account when filling a limited number of slots in its medical school? Or does fairness demand that universities treat every applicant in a color-blind fashion? More often than not, if a particular procedural rule—the right to filibuster, say, or the Supreme Court's approach to constitutional interpretation—helps us win the argument and yields the outcome we want, then for that moment at least we think it's a pretty good rule. If it doesn't help us win, then we tend not to like it so much.

In that sense, my colleague in the Illinois legislature was right when he said that today's constitutional arguments can't be separated from politics. But there's more than just outcomes at stake in our current debates about the Constitution and the proper role of the courts. We're also arguing about how to argue—the means, in a big, crowded, noisy democracy, of settling our disputes peacefully. We want to get our way, but most of us also recognize the need for consistency, predictability, and coherence. We want the rules governing our democracy to be fair.

And so, when we get in a tussle about abortion or flag burning, we appeal to a higher authority—the Founding Fathers and the Constitution's ratifiers—to give us more direction. Some, like Justice Scalia, conclude that the original understanding must be followed and that if we strictly obey this rule, then democracy is respected.

Others, like Justice Breyer, don't dispute that the original meaning of constitutional provisions matters. But they insist that sometimes the original understanding can take you only so far—that on the truly hard cases, the truly big arguments, we have to take context, history, and the practical outcomes of a decision into account. According to this view, the Founding Fathers and original ratifiers have told us *how* to think but are no longer around to tell us *what* to think. We are on our own, and have only our own reason and our judgment to rely on.

Who's right? I'm not unsympathetic to Justice Scalia's position; after all, in many cases the language of the Constitution is perfectly clear and can be strictly applied. We don't have to interpret how often elections are held, for example, or how old a president must be, and whenever possible judges should hew as closely as possible to the clear meaning of the text.

Moreover, I understand the strict constructionists' reverence for the Founders; indeed, I've often wondered whether the Founders themselves recognized at the time the scope of their accomplishment. They didn't simply design the Constitution in the wake